

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

PRESTON FRANKFORD SHOPPING CENTER
DALLAS, TX. LIMITED PARTNERSHIP,

Plaintiff(s),
v.

ORDER
10-CV-6448

BUTLER DINING SERVICES, LLC, D/B/A
Newk's Café, TOMMY E. BUTLER and
GALE M. BUTLER,

Defendant(s).

Currently pending before the Court is plaintiff's motion to compel (Docket # 35 and defendants' motion for a protective order (Docket # 39). On August 26, 2011, a hearing was held and arguments were heard from the parties. For the reasons set forth on the record during the August 26th hearing, the Court hereby Orders that:

1. Plaintiff's motion to compel (Docket # 35) is **granted**.

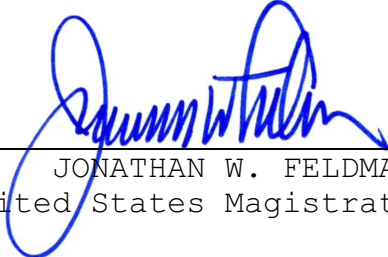
Defendants have thirty (30) days from entry of this Order to produce complete discovery responses to plaintiff's previously served discovery demands. The parties shall advise the Court within one week whether the depositions of defendants Tommy E. Butler and Gale M. Butler will take place on October 17 or October 18, 2011.

2. Defendants' motion for a protective Order (Docket # 39) is **denied**. A district court has "substantial discretion to designate the site of a deposition." Sloniger v. Deja, No. 09CV858S, 2010 WL 5343184, at *5 (W.D.N.Y. Dec.

20, 2010) (citations omitted). Defendants' objections to plaintiff's deposition Notices and other discovery demands were untimely. As a result, the Court in its discretion has determined that the depositions of Tommy and Gale Butler shall take place in Rochester, New York.

3. Plaintiff's motion for fees and costs is **denied without prejudice to renew** should defendants fail to comply with this Order.

SO ORDERED.



JONATHAN W. FELDMAN
United States Magistrate Judge

Dated: August 26, 2011
Rochester, New York